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**EXHIBIT 5-B**

**Premier Airlines, Inc.**

Citation	Rank(R)	Database	Mode
95 C.A.B. 101	R 8 OF 14	FTRAN-DOT	Page
(Cite as: 1982 WL 35275 (C.A.B.))			

\*1 Premiere Airlines, Fitness Investigation  
Dockets 38965, 39158  
Order 82-5-11

Adopted by the Civil Aeronautics Board at its office in Washington, D. C. on  
the 5th day of May, 1982

May 5, 1982

ORDER ON DISCRETIONARY REVIEW

Premiere Airlines, Inc. [FN1] has applied for a certificate to engage in scheduled interstate air transportation. [FN2] By Order 81-1-75, January 15, 1981, we tentatively concluded that the grant of the requested authority would be consistent with the public convenience and necessity, and instituted a fitness investigation in Docket 39158. The issues to be considered in that proceeding were to include: (1) whether Premiere is fit, willing and able to perform the services described in its application in Docket 38965 and to comply with the Act and our rules, regulations and requirements; (2) whether Premiere is a citizen of the United States within the meaning of section 101(16) of the Federal Aviation Act; and (3) whether we should approve, exempt or disclaim jurisdiction over any control or interlocking relationships under sections 408 and 409 of the Act which may exist.

On August 27, 1981, Administrative Law Judge John M. Vittone issued his first Initial Decision (I.D.-1) in this proceeding, which found that the applicant had failed to establish that it was a United States citizen within the meaning of section 101(16) of the Act. I.D.-1 also found that the applicant was fit, willing and able to properly perform the air transportation it proposed and that certain interlocking relationships be approved. [FN3] At the request of the applicant, we stayed further procedural dates by Order 81-10-14, October 1, 1981, so that it could reorganize and resolve its citizenship status. By Order 82-1-97, January 20, 1982, we reopened the proceeding and remanded it to the ALJ for such further proceedings on the citizenship issue as he deemed necessary.

Judge Vittone issued his second I.D. (I.D.-2) on April 6, 1982. In I.D.-2, he found that Premiere now met the citizenship test of section 101(16) of the Act and that it continues to be fit, willing and able. He further suggested that we impose four conditions on Premiere's authority to insure against the possibility of future foreign control. No exceptions were filed; however, we have decided to take review of I.D.-2 on our own initiative. [FN4]

In I.D.-1, Judge Vittone found that Premiere did not meet the citizenship test because one of its cofounders, Mr. Joseph J. Cicippio, borrowed \$2.5 million from his employer, a Saudi Arabian citizen, to invest in Premiere. Although the applicant asserted that there was no evidence that employer, Sheikh Shobokshi, had a substantial interest in Premiere's employer, Sheikh Shobokshi, had a substantial interest in Premiere's successful operation and was in a position to exert overriding influence and control over Mr. Cicippio and, through him, the applicant.

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Following the issuance of I.D.-1, the applicant reorganized itself to nullify and control the Sheikh may exercise through Mr. Cicippio. According to I.D.-2, it took the following steps: (1) Mr. Cicippio resigned from the applicant's management and board of directors; (2) Mr. Cicippio's voting interest in the applicant has been transferred to an independent third-party voting trustee, the Bank of America; (3) a new senior financial officer has been hired to replace Mr. Cicippio; and (4) Premier will pursue equity capital from sources other than Mr. Cicippio and the Sheikh.

\*2 We agree with Judge Vittone that, as reorganized, the applicant is now a citizen of the United States. In order to be found to be a U.S. citizen, we have consistently held that section 101(16) requires (1) that the president and two-thirds or more of the board of directors and other managing officers of a corporation must be U.S. citizens, and that 75% of the outstanding stock must be owned by U.S. citizens; and (2) that as a factual matter, the carrier must actually be controlled by U.S. citizens. [FN5] In this case, there was never any question that 75% of the stock was owned by U.S. citizens. Judge Vittone so found in I.D.-1. Rather, he found that the applicant had failed to demonstrate that the carrier was in fact controlled by U.S. citizens. In its reorganization plan, the applicant attempted to free itself from significant direct or indirect foreign involvement and we find that it did so effectively.

Under the terms of the trust, the trustee Bank of America is instructed to vote the shares in trust as the majority of outstanding shares are voted. [FN6] If, however, Premiere's Board of Directors is expanded to no less than seven members, these shares may be voted to elect a representative of Mr. Cicippio to the Board of Directors. The trust agreement provides that the trustee will notify us of any transfer of the stock certificates during the term of the trust. Under the terms of the trust, Mr. Cicippio has agreed to refrain from influencing Premiere's management during the term of the trust. Finally, the trust agreement may be terminated at Mr. Cicippio's request and by order of the CAB giving the trustee notice that the Board has approved the termination.

In order to further free itself from foreign influence, Premiere is also seeking funds from sources other than the Shobokshi-Cicippio loan. It is pursuing additional capital from a private sale of stock, and it hopes to make a public offering in the future.

The Bureau of Domestic Aviation suggested, and Premiere agreed to, imposition of four conditions, which Judge Vittone found we should attach to Premiere's authority. We agree, but we will modify the first condition slightly. As the condition is currently stated, we do not think it is clear that the voting trust cannot be used to meet the 75% ownership test of section 101(16). Rather, we will only permit use of a voting trust to meet the actual control test. We shall modify the condition to reflect our interpretation.

In addition, given the facts of this case, we are concerned that any additional infusion of funds from foreign sources, whether debt or equity, could jeopardize our finding of U.S. citizen control and, thereby, undermine Premiere's citizenship status. We have an obligation under the Act to monitor the citizenship of air carriers, and are not convinced that the suggested conditions alone will permit us to monitor adequately changes that may result in effective foreign control. Therefore, we will require Premiere to report

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(Cite as: 1982 WL 35275, \*2 (C.A.B.))

the receipt of any additional funds from foreign sources within 15 days of their receipt.

\*3 Finally, we shall dismiss Premiere's request that we determine whether its proposed service is consistent with the public convenience and necessity by show-cause procedures. We have previously concluded that, after December 31, 1982, no finding of consistency with the public convenience and necessity would be required for the award of certificate authority to engage in interstate and overseas air transportation of persons, property and mail under sections 401(d)(1), (2) and (3) of the Act, with the exception of intra-Alaska and intra-Hawaii all-cargo service. [FN7]

ACCORDINGLY:

1. We find that Premiere Airlines, Inc. is fit, willing and able to operate the proposed service and issue the attached certificate authorizing it to engage in scheduled interstate and overseas air transportation;

2. The authority granted here shall become effective five days after the Board has received from the FAA a copy of the applicant's Air Carrier Operating Certificate and Operations Specifications; Provided, however, that the Board may stay the effectiveness of this authority prior to that date; and Provided, further, that the continuing effectiveness of the authority granted here is conditioned upon the timely payment of such license fees as we may prescribe; and

3. Except to the extent granted, we deny all other pending motions, petitions, applications and requests in Dockets 38965 and 39158.

By the Civil Aeronautics Board:

PHYLLIS T. KAYLOR  
Secretary

All Members concurred.

FN1. Premiere originally applied using the name Wings International Airways, Inc. Wings Airways, Inc., a commuter air carrier, objected that use of the name 'Sings International Airways' by the applicant would be reasonably likely to result in public confusion. The applicant Wings decided to change its name to Premiere Airlines; its motion for leave to amend its application accordingly was granted by Judge Vittone in his I.D. dated August 27, 1981. Therefore, we shall refer to the applicant in its new name, Premiere Airlines, Inc.

FN2. Although the applicant requested authority to serve several named coterminal points, we will award it a certificate authorizing it to engage in interstate and overseas air transportation of persons, and interstate and overseas air transportation of property and mail between all points in the United States, its territories and possessions. The certificate will not authorize it to engage in intra-Alaska and intra-Hawaii all-cargo air service. This action is consistent with our interpretation of December 22, 1981, Docket 40208, that the Federal Aviation Act no longer requires us to list domestic points on a section 401 certificate. See Orders 81-11-23 and 81-12-0131, November 3, and December 22, 1981.

(Cite as: 1982 WL 35275, \*3 (C.A.B.))

FN3. As reorganized, Premiere no longer has an interlocking relationship that requires section 409 approval. Therefore, we will not pass on the section 409 issue.

FN4. Except to the extent modified, we accept the findings and conclusions of I.D.-1 and I.D.-2.

FN5. Uraba, Medellin and Central Airways, Inc., 2 C.A.B. 334 (1940); Willye Peter Daetwyler, d/b/a Interamerican Airfreight Co., 58 C.A.B. 118 (1971).

FN6. The remainder of Premiere's stock is held as follows: 26% is held by a U.S. citizen, 25% is held by an Australian citizen. We caution the applicant that acquisition of any further stock by a non-U.S. citizen may jeopardize its recently established citizenship status in two ways: (1) it will result in less than 75% of its stock being owned by U.S. citizens; and (2) because of the clause in the voting trust directing the shares to be voted with the majority of outstanding stock, it may result in the shares being voted with the non-U.S. citizens' holdings, resulting in foreign control.

FN7. See, Application of Trenton Hub Express, Order 81-12-146, December 23, 1981.

CAB

Issued by Order 82-5-11

CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

for Route 337

PREMIERE AIRLINES, INC.

\*4 is authorized, subject to the following provisions, the provisions of Title IV of the Federal Aviation Act of 1958, as amended, and the orders, rules, and regulations issued under it, to engage in interstate and overseas air transportation of persons.

The holder is also authorized to engage in interstate and overseas air transportation of property and mail between all points in the United States, its territories and possessions.

This authority is subject to the following terms, conditions and limitations:

(1) The holder must remain in compliance with the section 101(16) definition of a U.S. citizen, which requires (i) that the president and at least two-thirds of the board of directors and other managing officers be U.S. citizens, and that at least 75 percent of the voting interest be owned by U.S. citizens; and (ii) that the holder be in fact controlled by U.S. citizens. The holder shall not consider Mr. Joseph Cicippio or any person who is employed by, indebted to, associated with or otherwise involved with him or with any member of the Shobokshi group, to be a U.S. citizen for purposes of meeting the U.S.-control requirement of clause (ii) above, for as long as Mr. Cicippio remains an employee of, or indebted to, the Shobokshi Group, or any member thereof.

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(2) The holder shall prohibit Mr. Joseph Cicippio from exercising his voting interest, from being a member of the board of directors or from holding a corporate office until the termination of the December 16, 1981, Voting Trust Agreement executed between Mr. Cicippio, the beneficiary, and the Bank of America, the Trustee, except as provided by section 3 of the voting trust.

(3) The December 16, 1981, Voting trust Agreement executed between Mr. Cicippio, the beneficiary, and the Bank of America NT & SA, the Trustee, shall not be terminated without the approval of the Board.

(4) Prior to the inauguration of service under this certificate and thereafter, on August 10th and February 10th of each year, the holder shall file with the Director of the Bureau of Domestic Aviation a report, in narrative form, describing any changes in its officers or directors and a current financial statement which includes the identification of all persons who hold more than five percent of its equity and the amount held by each. The report shall include the citizenship and residence of all creditors holding in excess of five percent of the total outstanding debt. If any debt or equity interest in excess of five percent is held directly or indirectly on behalf of some other person, the report shall include the citizenship and residence of the beneficial owner together with the full text of any written agreement or a summary of any oral agreement between the parties pertaining to such interest; provided that this requirement will be terminated upon Board approval of the termination of the Voting Trust Agreement dated as of December 16, 1981 entered into by and between Mr. Joseph J. Cicippio and Bank of America NT & SA as voting trustee, unless the Board determines at that time that the public interest requires continuation of this reporting requirement.

\*5 (5) The holder shall report to the Director of the Bureau of Domestic Aviation, in narrative form, any receipt of capital or other funds used to finance the holder's operations, whether as debt or equity, from any source directly or indirectly controlled by foreign nationals, within 15 days of the receipt of such funds.

(6) The holder shall not engage in air transportation of property or mail in all-cargo service between points wholly within the States of Alaska or Hawaii.

(7) Subject to compliance with the provisions of sections 401(j) and 419 of the Act, and all orders and regulations issued by the Board under those sections, the holder may reduce or terminate service at any point or between any two points.

(8) The holder shall not provide scheduled passenger air transportation to or from Dallas (Love Field), Texas, and one or more points outside Texas except that:

(a) The holder may provide charter air transportation not to exceed ten flights per month:

(b) The holder may provide scheduled passenger air transportation between Love Field and one or more points within the States of Louisiana, Arkansas, Oklahoma, New Mexico and Texas, if in connection with this service:

(i) the holder does not offer or provide any through service or ticketing with another air carrier or foreign air carrier; and

(ii) the holder does not offer for sale transportation to or from, and the flight or aircraft does not serve, any point which is outside Texas or the four contiguous states.

The exercise of the privileges granted by this certificate shall be subject to  
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such other reasonable terms, conditions and limitations required by the public interest as may from time to time be prescribed by the Board.

This certificate shall become effective on [FN\*]\_\_\_\_\_: Provided, That the continued effectiveness of the authority to serve Route 337 shall be subject to timely payment by the holder of such license fees as may be prescribed by the Board.

The Civil Aeronautics Board has directed its Secretary to execute this certificate and to affix the Board's seal on May 5, 1982.

PHYLLIS T. KAYLOR

Secretary

FN\* [FAA documents not received by presstime.]

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**EXHIBIT 5-C**

**Northwest Airlines, Inc.**

Citation	Rank(R)	Database	Mode
1991 WL 247884 (D.O.T.)	R 21 OF 23	FTRAN-DOT	Page
(Cite as: 1991 WL 247884 (D.O.T.))			

\*1 In the matter of the acquisition of **NORTHWEST AIRLINES, INC.**  
by Wings Holdings, Inc.  
Docket 46371  
**Order 91-1-41**

issued by the Department of Transportation on the 23rd of January, 1991  
January 23, 1991

Served January 23, 1991

#### ORDER MODIFYING CONDITIONS

##### SUMMARY

By this order, we are granting, in part, the petition for modification of **Order 89-9-51** filed by **Northwest Airlines, Inc.**, and we are amending certain conditions imposed by that order in connection with the acquisition of **Northwest** by Wings Holdings, Inc.

##### BACKGROUND

In August 1989, NWA, Inc., the parent company of **Northwest Airlines, Inc.**, was acquired by Wings Holdings, Inc., a newly formed company. Wings is owned by several individuals and entities, including five U.S. citizens--Mr. Alfred Checchi, Mr. Gary Wilson, Mr. Frederic Malek, Wings Associates, L.P., and Bankers Trust New York Corporation--and two foreign companies--Koninklijke Luchtvaart Maasschappij (**KLM** Royal Dutch Airlines) and Elders IXL, Ltd.

At the time of the acquisition, Messrs. Checchi, Wilson, and Malek together ("the Checchi Interests") owned approximately half of the common stock (voting and nonvoting) of Wings, but controlled about two-thirds of the voting portion of that stock. They held no preferred stock. [FN1] They could also appoint a majority of the Wings directors. [FN2]

Wings Associates, L.P., a California limited partnership whose sole general partner is Richard C. Blum & Associates, Inc., [FN3] purchased 14.5 percent of the shares of voting common stock and 10 percent of the shares of nonvoting preferred stock. In total, it contributed 14.2 percent of the initial equity of Wings.

Bankers provided approximately 11.3 percent of the equity of Wings and received half of the nonvoting common stock and 10 percent of the nonvoting preferred stock.

**KLM**, a foreign air carrier, was the largest provider of equity in Wings, having purchased \$350 million in preferred stock and \$50 million in common stock, or 56.74 percent of the total equity investment. For its investment, **KLM** received 70 percent of Wings' nonvoting preferred stock, 31 percent of its nonvoting common stock, and 4.9 percent of Wings' voting common stock, along with a warrant giving **KLM** the right to convert up to \$50 million of its preferred stock into common stock, some of which could be voting stock. [FN4]

Elders, an Australian citizen and investment company, acquired \$50 million in  
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(Cite as: 1991 WL 247884, \*1 (D.O.T.))

preferred Wings stock and, through an affiliate, Wings Acquisition Investor, Ltd., \$30 million in common stock. Elders contributed approximately 11.3 percent of the total equity of Wings and received 10 percent of its nonvoting preferred stock, 16 percent of its nonvoting common stock, and 15.4 percent of Wings' voting stock.

**KLM** and Elders each received the right to name one representative to the 12-person Wings board of directors. No limits were proposed on these board members' participation in Wings' or **Northwest's** decisionmaking. As part of the acquisition agreement, **KLM** also proposed (1) to name a three-person committee having the general responsibility of advising Wings on the management of **Northwest's** financial affairs; and (2) to enter into a variety of cooperative agreements with **Northwest** covering marketing, sales, scheduling, operations, and customer services, and to preclude such agreements with other carriers if they were contrary to the spirit or purpose of the **KLM/Northwest** agreements.

\*2 After review of the proposed acquisition, the Department found that **KLM** could be in a position to exert actual control over Wings, and thus over **Northwest**, jeopardizing **Northwest's** status as a U.S. citizen. [FN5] These findings were based on **KLM's** significant equity investment in Wings (56.74 percent); the right to sit on Wings' board and to establish a three-person committee to advise Wings on **Northwest's** financial affairs; the proposed cooperative working arrangements between the two carriers and the prohibition on entering into arrangements with other carriers if they might contradict the purposes of the **KLM/Northwest** agreements; and the fact that **Northwest** and **KLM** are actual and potential competitors. [FN6]

As a result of these concerns, **Northwest** and Wings entered into a Consent Order with the Department, Order 89-9-51, September 29, 1989, in which they agreed to take various "steps to eliminate any question that [**Northwest**] may be in violation of the citizenship requirements of the Act." [FN7]

Specifically, **Northwest** and Wings agreed to:

(1) Reduce **KLM's** share of Wings' equity investment to a maximum of 25 percent of the total equity. This change was to be completed within six months without **KLM's** acquiring a debt interest in Wings. If, after six months, **Northwest** demonstrated that it was making good faith efforts to achieve the equity interest goals, the Department indicated that it might permit up to an additional six months to achieve them. [FN8] Until **KLM's** equity investment was changed, its interest beyond 25 percent was to be placed in a voting trust administered by a U.S. trustee free of **KLM's** control.

(2) Terminate **KLM's** right to appoint a financial advisory committee and require that **KLM's** representative on the Wings board of directors be recused from certain matters. [FN9]

(3) File reports with the Department of any change in ownership of any class of stock in Wings and file any agreement between **Northwest** and **KLM** other than standard interline or other standard industry agreements.

In addition, because the acquisition of **Northwest** involved the assumption of considerable debt, and because of our need to be able to monitor the carrier's future financial performance (and that of its corporate parents) to ensure the carrier's continuing fitness, we required **Northwest** to make available to the Department specified information set forth in Appendix A to that order. That information, which included forecasts, budgets, and monthly, quarterly, and annual financial statements, as well as reports on major transactions, was

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(Cite as: 1991 WL 247884, \*2 (D.O.T.))

required partly because the reporting corporate entities are privately held and not subject to Securities and Exchange Commission reporting.

#### PETITION FOR MODIFICATION.

On January 15, 1991, Northwest filed a petition with the Department in which it asks us to (1) terminate the requirement of Order 89-9-51 that KLM's total equity investment in Wings be reduced to 25 percent; (2) permit KLM to hold 49 percent of the equity in Wings, including 10.544 percent of the voting interest, free of the voting trust required by the Order, with any equity in excess of 49 percent to continue to be held in the trust; [FN10] (3) permit KLM to designate three members of the Wings board of directors after that board has been increased from 12 to 15 members; and (4) remove the financial reporting conditions contained in the order. Northwest further requests that the Department act on its petition by January 23, 1991, to enable it to prepare the necessary corporate documents and include these matters as agenda items for the January 31, 1991, Wings board of directors meeting.

\*3 In support of its request to change the divestiture requirements, Northwest states that that portion of KLM's equity interest that is currently being held in trust has no voting or conversion rights, restrictive covenants, or other attributes that would enable KLM to exert control over Wings or Northwest; and that, given the absence of any effort by KLM in the past 15 months to exert control, there is no reason for continuing the divestiture requirement. The carrier states that the Checchi Interests control a majority of the voting stock of Wings, have the power to appoint a majority of the members of the board, and are actively involved in the management and major decisions of the carrier, giving them effective control. Northwest further argues that, by allowing "for foreign investment of up to forty-nine percent of Wings' equity" without the voting trust requirement, the Department will provide the carrier with maximum flexibility to improve its capital structure and further its economic growth. They further argue that this is particularly important given the current economic climate and would be consistent with the new international aviation environment. In addition, Northwest contends that other carriers might also benefit if the Department were to liberalize the policies on foreign investment which were enunciated in the Consent Order.

With respect to Northwest's proposal to increase the size of the board of directors and the number of KLM's representatives, the carrier states that one of the additional KLM representatives would be a U.S. citizen and that, even with the Elders representative, such an increase will still result in more than two-thirds of the board seats being held by U.S. citizens as required under the Act. [FN11] Northwest also notes that the Department recently approved a similar number of SAS representatives on the 15-member Continental Holdings board. [FN12]

With respect to its request for the elimination of the financial reporting requirements set forth in Appendix A to Order 89-9-51, Northwest states that the requirements are very burdensome and are unnecessary since Northwest already files standard financial reports with the Department (albeit on a less frequent basis), and since Northwest has been successful in reducing the acquisition debt without adversely affecting the financial strength of the company.

(Cite as: 1991 WL 247884, \*3 (D.O.T.))

In light of **Northwest's** request for expedited action, we issued a Notice on January 16, 1991, requiring that answers to **Northwest's** petition be filed by 5:00 p.m. January 18, with replies due by Noon on January 22.

Answers to the petition were filed by Aloha Airlines, Inc., America West Airlines, Inc., American Airlines, Inc., Delta Air Lines, Inc., and the Air Line Pilots Association (ALPA). [FN13]

Several of the parties object to **Northwest's** request for action by January 23 and the Department's shortening of the answer period. [FN14] These parties allege that the petition raises important issues of fact, law, and policy that should not be decided in one week. The parties claim that **Northwest** has not adequately justified its request for shortening normal procedural dates and has not shown that it would be harmed by use of more normal procedures. Delta, out of concern that an ill-considered decision may establish bad policy, urges that the Department expressly state that any decision we issue will not be considered as a precedent. American, on the other hand, seeks a policy statement rather than a case-by-case approach to establishing standards for **foreign** investment.

\*4 All of the airlines filing answers raise the issue of bilateral reciprocity. In general, these carriers state that liberalization of the amount of **foreign** investment permissible in U.S. airlines should be limited to those cases where the homeland of the **foreign** investor affords open entry to U.S. carriers and allows similar investment treatment by U.S. companies in **foreign** airlines. Delta argues that while the Netherlands has adopted a liberal aviation policy, the European Economic Community, of which it is a member, may adopt restrictive policies.

Moreover, answering parties take issue with the justifications set forth in the **Northwest** petitions. [FN15] ALPA and Aloha argue that **Northwest's** claim that **KLM** has made no effort to exert control is open to question and, even if true, merely means that the safeguards of **Order** 89-9-51 were effective. They argue that, under established precedent, potential control, whether actually exercised or not, is illegal and ask why **KLM** seeks to increase its potential to control **Northwest** (by converting nonvoting stock to voting stock, increasing its Board vote from one to three, and removing certain shares from an existing voting trust). They claim that, except for a desire to assert control, there is no reason for these actions.

On January 22, **Northwest** filed a reply to the answers stating that it is not seeking a change in the law with respect to **foreign** ownership, but is merely seeking modification of specific conditions imposed by the Department out of concern that the size of **KLM's** investment might afford it an opportunity to exercise control over **Northwest**; that this has not occurred and the conditions have outlived their usefulness; that the Department continues to have the ability to monitor the situation and to take action should it appear at some future time that **KLM** is attempting to exert control over **Northwest**; and thus, that its petition should be granted in its entirety. Accompanying **Northwest's** reply was a Motion for leave to file late, which we will grant. [FN16]

#### DECISION

We have decided to grant, in part, the petition filed by **Northwest** and to amend the conditions imposed in **Order** 89-9-51 with respect to the limits placed  
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(Cite as: 1991 WL 247884, \*4 (D.O.T.))

on **KLM's** total investment in Wings. [FN17] We will also grant the carrier's request to increase the number of directors on Wings' board as well as the number of representatives **KLM** is allowed to appoint. We have also decided to relieve **Northwest** of certain of the financial reporting requirements imposed by our Consent Order. These decisions are based on our reassessment of the complexities of today's corporate and financial environment, a reexamination of the relationship between nonvoting equity/debt and control in light of our recent experience in this area, and our observations of who controls **Northwest** since the Wings acquisition. Moreover, we reached these decisions in the context of the liberalized aviation relationship that prevails between the United States and **KLM's** homeland. [FN18] However, as discussed below, we are not prepared to grant **Northwest's** request in its entirety.

\*5 It has been over 15 months since we reviewed the **Northwest** acquisition and issued our Consent Order in that case. During this time, **Northwest** has filed substantial information in compliance with our order. This information has enabled us to monitor the carrier's fitness and citizenship closely.

Our review of **Northwest** during this period has led us to conclude that its control resides firmly with the Checchi Interests. Messrs. Checchi, Wilson, and Malek are not merely passive investors in the carrier, but are actively involved in its operations and management. They hold approximately two-thirds of the Wings voting stock and have the right to appoint the majority of its directors. [FN19] All hold key positions with Wings. [FN20] In addition, a number of **Northwest's** current key management personnel were appointed since the Wings buyout. This includes Mr. John H. Dasburg, President and Chief Executive Officer of **Northwest** and NWA, who has been associated with the Checchi Interests in other endeavors. [FN21] Moreover, in the case of several recent key management appointments, each person was interviewed by Messrs. Checchi, Wilson, Malek, and/or Dasburg and none was interviewed by **KLM** or its director.

In view of this finding that **Northwest** is firmly controlled by U.S. citizens, we see no potential for the foreign interest represented by **KLM** to exert control, given the structure of these corporate mechanisms and the remaining restrictions retained in this order. Therefore, some modification of the restraints placed on **KLM's** equity investment in Wings and expansion of its representation on the Wings board is warranted.

### Equity

Since our issuance of Order 89-9-51, we have had brought before us a number of proposals where new or existing air carriers have sought to avail themselves of capital from foreign sources. Each case has presented circumstances unique to the particular transaction, causing us to examine each set of facts in the context of the control standard.

During the course of these assessments, we have seen the complexity and international makeup of these arrangements increase, new financial instruments emerge, and the inter-relationship of these instruments grow. Based on that experience, we have reexamined our application of the control test in order to reflect more accurately today's complex, global corporate and financial environment, consistent with the requirement for U.S. citizen control. Specifically, we have reviewed the relationship between voting equity, on the one hand, and nonvoting equity and debt, on the other.

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(Cite as: 1991 WL 247884, \*5 (D.O.T.))

While we continue to believe that "check-list" standards are not advisable due to the uniqueness and complexity of each transaction, we also believe that a flexible guideline can be established. [FN22]

**Northwest** has suggested that **foreign** equity investment of up to 49 percent, including both voting and nonvoting stock, be considered acceptable. We believe that its suggestion has merit to the extent that it includes all **foreign** equity investment in a U.S. carrier, since that would assure that over 50 percent of the equity remains in U.S. hands. Total **foreign** voting equity would, of course, still be subject to the 25 percent statutory limitation. While the facts of each case would have to be reviewed in their entirety, as a general matter, we would not construe **foreign** equity investment up to these limits, taken alone, as indicative of **foreign** control.

\*6 Moreover, we note that many U.S. air carriers have taken on sizable amounts of debt from **foreign** sources. In some cases, the **foreign** debt holder is a business involved in aviation, such as an aircraft manufacturer or lessor. Our review of numerous debt arrangements has revealed very few indications of potential **foreign** control. Therefore, absent a default, unless the loan agreement provides special rights to the debt holder that imply control, we do not anticipate treating debt as a **foreign** control issue.

**Foreign** equity investment in Wings still significantly exceeds the 49 percent guideline. **KLM** and **Elders** together contributed about 68 percent of the total Wings equity. Furthermore, after the proposed conversion of **KLM's** stock, they will also control 24.99 percent of the voting interest, with **KLM** holding 10.544 percent. [FN23] While **Northwest** has requested that we permit **KLM** to maintain its entire equity investment, and allow 49 percent of it to remain outside of the voting trust arrangement, we are not prepared to grant this request. We have, however, decided to amend Order 89-9-51 so as to permit total **foreign** equity investment in Wings of up to 49 percent (approximately \$350 million) with no restriction other than the 25 percent voting stock restriction set forth in the Act. We are also prepared to allow some additional flexibility to the carrier in conforming its equity financing to our guidelines in view of the circumstances of this case where, as discussed above, the **Checchi Interests** hold controlling interest and have demonstrated their actual control of the carrier, and in light of our liberal aviation relationship with the Netherlands.

The amended **foreign** equity restriction may be met in any one or more of the following ways: (1) **KLM** and **Elders** may divest any amount above 49 percent to a U.S. citizen or citizens; (2) they may convert any of that excess amount to debt as long as the debt instrument confers no special control rights to the debt holder; or (3) **KLM** may allow the excess amount to remain indefinitely in a voting trust approved by the Department and administered by an independent U.S. citizen trustee. We underscore that this flexibility regarding the excess amount is entirely peculiar to this case, and is partly a reflection of our extended and detailed familiarity with this particular carrier.

We will require that the parties advise us of any action taken to comply with this condition within five (5) business days of that action. Further, should the equity be converted to debt, that notice must be accompanied by copies of all documents relating to that debt.

Directors

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(Cite as: 1991 WL 247884, \*6 (D.O.T.))

With respect to **Northwest's** proposal to increase the size of the Wings board of directors from 12 to 15 and to increase the number of **KLM** representatives on that board from one to three, we have decided to grant this request. This action is consistent with that taken in our recent decision involving the acquisition of additional stock interests in Continental Airlines by Scandinavian Airlines System and the placement of three SAS representatives on the Continental Holdings' board. [FN24] As in that case, we find here that the presence of the three **KLM** representatives will be more than offset by the presence of the remaining 12 board members, 11 of whom are U.S. citizens and 9 of whom are appointed by the Checchi Interests. [FN25]

\*7 However, in granting this request, we note that board member positions are not always equal; special positions such as Chairman or important committee assignments afford some board members more powers or influence than others. Therefore, as a general rule, we would not allow a **foreign** citizen to hold the position of Chairman of the Board. Similarly, the naming of a disproportionate number of **foreign** director representatives to important committees, such as the executive committee, nominating committee, or finance committee, may be taken as an indication of control and would be cause for us to review the citizenship of the affected air carrier.

With respect to **KLM's** proposed representatives, we will require that **Northwest** notify us of the identity and affiliations of these persons as soon as they are named, along with a listing of any special positions on the board or with **Northwest** or committee posts that they will hold. We will also require **Northwest** to provide us with an annual report as to board and committee membership, which would include an identification of those directors who are not U.S. citizens or are appointed by non-U.S. citizen equity holders. [FN26]

We will also extend the recusal requirements imposed by Order 89-9-51 to all of **KLM's** representatives on the Wings board.

#### Financial Reporting

We have reviewed our continuing need for each of the items required by Appendix A to Order 89-9-51, and we will grant **Northwest's** request to eliminate the reporting requirement for the vast majority of them.

The only information we will continue to require are those data specified in items B.1, B.2(a), and B.5, which are routinely available to us in Securities and Exchange Commission reports for all major certificated airlines and are relevant and regularly used for continuing fitness monitoring purposes. In **Northwest's** case, these data are not otherwise available because, by reason of its being privately held, it is not required to file the subject SEC reports.

#### ACCORDINGLY:

1. We grant the petition for modification of Order 89-9-51 filed by **Northwest Airlines, Inc.**, to the degree consistent with this order;
2. We grant the Motion of **Northwest Airlines** for leave to file late; and
3. We will serve a copy of this order on the persons listed in Attachment A.

By: SAMUEL K. SKINNER  
Secretary

FN1. The total equity investment in Wings was \$705 million. Of this amount, \$205 million was in the form of common stock, only some of which was voting, and the remainder was preferred stock. Messrs. Checchi, Wilson, and Malek contributed \$40 million in equity, or just over 5 percent of the total equity investment.

FN2. The boards of directors of Wings, NWA, and **Northwest** are identical. The Checchi Interests have the right to appoint 8 of the 12 members. The remaining four members are appointed by Wings Associates, Bankers, **KLM**, and Elders.

FN3. In addition to the general partner, there are 12 limited partners. All of the partners are U.S. citizens.

FN4. **KLM** subsequently converted \$50 million in preferred stock to nonvoting common stock.

FN5. Section 101(16) of the Federal Aviation Act requires that the President and at least two-thirds of the board of directors and other managing officers of an air carrier be U.S. citizens and that at least 75 percent of the voting stock in the company be owned or controlled by U.S. citizens. Historically, the Department, and the Civil Aeronautics Board before it, have interpreted the statute to require that a carrier, in fact, be under the actual control of U.S. citizens.

FN6. The Department concluded that Elders did not appear to be in a position to control Wings or **Northwest**, because of Elders' relatively modest investment in comparison to Wings' total equity (about 11.3 percent) and because Elders appeared to have no more than a pecuniary interest in the transaction. See **Order 89-9-51** at 5.

FN7. **Order 89-9-51** at 8.

FN8. After we issued the Consent Order, **Northwest** and **KLM** requested two extensions of the time by which **KLM** was to reduce its equity interest to 25 percent. The new deadline is September 29, 1991. See letters from Jeffrey N. Shane to **Northwest** dated March 28, 1990, and September 28, 1990.

FN9. These included any matters which might have a direct and predictable effect on (1) the financial interest of **KLM's** operations; (2) actual or potential competition with **KLM** in any market or markets; or (3) bilateral or multilateral aviation negotiations to which **KLM** or the Government of the Netherlands is a party.

FN10. According to the petition, **KLM** plans to increase its voting interest in Wings by converting shares of its nonvoting common stock into voting common stock, giving **KLM** a total of 10.544 percent of the voting interest. **KLM** intends to present its notice of conversion at the January 31 Wings board of directors meeting. As a result of the conversion, the other voting interests in Wings will change and will be as follows: the Checchi Interests will hold  
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(Cite as: 1991 WL 247884, \*7 (D.O.T.))

61.364 percent, Elders will hold 14.455 percent, and Wings Associates will hold 13.637 percent. Together, the **foreign** interests represented by **KLM** and Elders will control 24.999 percent of the voting interests in Wings.

FN11. The directors nominated by the Checchi Interests would also be increased from eight to nine.

FN12. See **Order** 90-9-15 at 6-7.

FN13. We also received an answer from Captain H.T. Dodge, Chairman, Master Executive Council of the Air Line Pilots Association of **Northwest Airlines**; however, that answer was subsequently withdrawn.

FN14. See Answers of Aloha, America West, Delta, and ALPA.

FN15. Ibid.

FN16. Alaska Airlines, Inc., also filed an untimely reply, but without an accompanying motion, that linked **foreign** control and cabotage. This **order** makes no changes that would allow cabotage directly or indirectly.

FN17. With respect to the objections filed by four answering parties to **Northwest's** request for expedition and our action to shorten the normal time allowed for responses and replies, we note that we have been reviewing the citizenship and control issues encompassed in **Northwest's** petition for some time and that our decisions, as set forth in this **order**, do not, as some answering decisions, as set forth in this **order**, do not, as some answering parties claim, represent a rush to judgment. Since issuance of **Order** 89-9-51, we have been monitoring matters pertaining to the financial fitness and control of **Northwest** in particular and have been reviewing similar control issues with respect to a number of other companies. We also note that, since the acquisition of **Northwest** by Wings was announced in June 1989, and Docket 46371 was established later that month, none of the answering parties have, until now, filed any answers or objections in Docket 46371.

FN18. Our decision is based on our current aviation relationship with the Netherlands. We see no reason to speculate on policies that the EEC may or may not adopt, as Delta would have us do.

FN19. The Checchi Interests' voting stock will be diluted when **KLM** exercises its conversion rights; however, it will still control over 61 percent of the voting interests in Wings. In addition, the Checchi Interests will have the right to appoint 9 of the 15 members of the Wings board.

FN20. Mr. Checchi is Chairman of the board of Wings, NWA, and **Northwest**, and Messrs. Wilson and Malek are directors and Vice Chairmen of Wings. Mr. Malek is also Vice Chairman, as well as a director, of NWA and **Northwest**.

FN21. Mr. Dasburg is also a director, Executive Vice President, and Chief Financial Officer of Wings.

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FN22. As with all decisions in this area, the decision in this order will constitute a part of the body of our precedent to be considered in the disposition of future cases as appropriate.

FN23. The fact that the **foreign** interest is divided among independent entities, rather than being owned by one **foreign** party, tends to lessen somewhat the concern about the potential exertion of **foreign** control. This is particularly true where, as here, we have no evidence to indicate that Elders and **KLM** have acted in concert or, indeed, that their community of interest is such to motivate them to act in concert.

FN24. See **Order** 90-9-15 at 6-7.

FN25. Even though **KLM** states that one of its three representatives will be a U.S. citizen, since that person will be representing **KLM's** interests on the board, we construe that person as a **foreign** director.

FN26. This report is to be filed with our Office of Aviation Analysis by June 30 of each year.


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**CERTIFICATE OF SERVICE**

The undersigned, an employee of Haley Bader & Potts P.L.C., hereby certifies that the foregoing document was mailed this date by First Class U.S. Mail, postage prepaid, or was hand-delivered\*, to the following:

David E. Honig, Esquire  
Minority Media and Telecommunications Council  
Law Offices of David E. Honig  
3636 16th Street, N.W.  
Suite B-863  
Washington, D.C. 20010

  
\_\_\_\_\_  
Dawn Smith

April 28, 1995